STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID EDWARDS,

Defendant-Appellant.

UNPUBLISHED
March 19, 1999

No. 203687
Recorder's Court
LC No. 96-008157

Before: Markman, P.J., and Jansen and J. B. Sullivan*, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of malicious destruction of property over $100, MCL 750.377a; MSA 28.609(1), and felonious assault, MCL 750.82; MSA 28.277. His convictions arose from an incident in which defendant threw a brick through the window of a truck pulling away from a residence and seriously injured the driver of the truck. Defendant was sentenced to a three-year term of probation. He now appeals as of right. We affirm.

Defendant argues that the evidence presented and the trial court's findings of fact were insufficient to support his convictions, and that the verdict was contrary to the great weight of the evidence. Deference is given to the trial court's ability to view the evidence and the demeanor of the witnesses, and its findings of fact will not be set aside unless clearly erroneous. *People v Johnson*, 202 Mich App 281, 288; 508 NW2d 509 (1993). A court's finding of fact is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake has been committed. *People v Givans*, 227 Mich App 113, 119; 575 NW2d 84 (1997).

A claim based on the sufficiency of the evidence in a bench trial is reviewed by considering the evidence presented in a light most favorable to the prosecutor and determining whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Petrella*, 424 Mich 221, 268-70; 380 NW2d 11 (1985); *People v Plummer*, 229 Mich App 293, 299; 581 NW2d 753 (1998). A new trial based upon the weight of the evidence should be granted

*Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Where testimony is in direct conflict, and testimony supporting the verdict has been impeached, the issue of credibility should be left to the factfinder. *Id.* at 642-43.

Here, the only disputed issue was whether it was defendant who threw the brick. The victim testified that he saw defendant pick up a brick immediately before a brick came crashing through the window of his truck; that defendant was the only one in the immediate vicinity of the truck when this occurred; that defendant was angry at the victim and had asked him to leave the area; that the brick shattered one window and cracked another window of the victim's truck; and that the victim suffered extensive injuries. From this evidence, it is possible to find that all of the elements of the charged crimes were proven and that defendant was the perpetrator. We are not left with a definite and firm conviction that the trial court's findings of fact were mistaken. Nor is the verdict contrary to the great weight of the evidence.

In a bench trial, the trial court is required to make separate findings of fact and conclusions of law. MCR 2.517(A)(1). However, this rule is satisfied if it is manifest that the court was aware of the factual issues and resolved them, and if it would not facilitate appellate review to require further explication of the thought process by which the court reached its result. *People v Johnson*, 208 Mich App 137, 141-42; 526 NW2d 617 (1994). In the instant case, it is apparent from the record that the court was aware that the only issue was whether defendant threw the brick, and that the resolution of this issue hinged on the credibility of the witnesses.

It is strictly within the province of the trier of fact to resolve issues of credibility. *People v Fetterley*, 229 Mich App 511, 545; 583 NW2d 199 (1998). Here, the trial court specifically stated that it found the defense witnesses' testimony to be incredible. On the other hand, the court believed the complainant's testimony that, while he did not see who threw the brick, he did see defendant bend down and pick the brick up. Additionally, contrary to defendant's assertion, the court did not err in also considering defendant's possible motive to commit these crimes. Evidence of motive may be highly relevant, particularly where the proofs are circumstantial. See *People v Fisher*, 449 Mich 441, 453; 537 NW2d 577 (1995); see also MRE 404(b)(1); *Plummer*, *supra* at 299.

Finally, defendant contends that the prosecutor presented no testimony regarding the value of the damage to the property, and that, therefore, insufficient evidence was presented to justify his conviction of malicious destruction of property over $100. We disagree. The complainant testified that the brick broke out two windows in his truck, and that the damage to the vehicle was over $100. From this evidence, when viewed in a light most favorable to the prosecutor, a rational trier of fact could reasonably conclude that the element of damages was established.

Affirmed.

/s/ Stephen J. Markman
/s/ Kathleen Jansen
/s/ Joseph B. Sullivan